

# **WSDOT Design-Build Project Delivery Guidance Statement**

## **Change Orders**

**(Contracts with Category A and B Change Orders, Only)**

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**Format – Final**

**Relevant Section of WSDOT DB Guidebook – 6.10**

**Contract Changes**

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## **1 Introduction**

This Guidance Statement establishes WSDOT policy for delegation of approval and execution authority for Design-Build Contract Change Orders, and requirements for Change Order documentation, transmittal, and distribution.

## **2 Guidance Statement**

### **2.1 Applicability**

This Guidance Statement applies only to those WSDOT Design-Build Contracts which contain Category A and B Change Order requirements.

### **2.2 Direction**

WSDOT wants the Design-Builder to have significant flexibility in determining how best to design and construct the Project within the parameters established by the Contract. Nonetheless, WSDOT approval is required for changes to the Contract. WSDOT's internal process for types of change and Change Order approval authority shall adhere to the requirements detailed below and in the attached Design-Build Change Order Checklist.

### **2.3 Contract Changes**

“Change Order” is a term defined in Section 1-01.3 of the General Provisions. In accordance with General Provision 1-04.4, the Contract requires all changes to be either approved, or ordered, in writing. Until a written change is approved or ordered, the Design-Builder shall remain obligated to perform the Work in accordance with the Contract. This is different from Design-Bid-Build contracts, where oral orders may be used to initiate a change.

The decision of WSDOT as to rejection or approval of any Design-Builder proposed change and/or as to its status regarding “equal or better” shall be at the sole discretion of WSDOT and shall be final and not subject to consideration by the Disputes Review Board or appeal.

### **2.4 Changes to Category A Requirements**

Section 1-04.4(3) of the General Provisions stipulates that a change to any of the following Contract requirements comprises a Category A change:

- Any requirement in the General Provisions
- Any of the standards identified as “Mandatory Standards” in any Section of the Technical Requirements (but not including the WSDOT Standard Specifications)
- Any change to a commitment made in the Design-Builder's Proposal Documents
- A change to the Basic Configuration, regardless of whether initiated by a Necessary Basic Configuration Change or a VECP

In general, Category A Requirements may be changed only through VECPs or WSDOT-directed changes.

All changes to Category A requirements shall be documented using the Change Order Form.

### 2.4.1 Basic Configuration Changes

There are two types of Basic Configuration changes; a Necessary Basic Configuration Change, and a VECP that changes the Basic Configuration. General Provision 1-04.4(8) describes these changes, and the cost-sharing parameters between WSDOT and the Design-Builder.

The first case is a Necessary Basic Configuration Change, as defined in 1-01.3(1) of the General Provisions. The Department is responsible for/entitled to any increase or decrease in cost or time, subject to the limitations in 1-04.4(8).

The second case is a change proposed by the Design-Builder which does not fit the definition of a Necessary Basic Configuration Change. In that case, any cost savings should be evaluated as a VECP per General Provision 1-04.4(4).

### 2.4.2 Value Engineering Change Proposal (VECP)

The requirements for implementing a VECP are provided in General Provision 1-04.4(4). The price adjustment factor described in 1-04.4(4)4 is interpreted as follows:

$$\text{Estimated Net Savings} = W_{\text{original}} - W_{\text{actual}}$$

$$\text{Price Adjustment} = C_{\text{WSDOT}} + \frac{1}{2}(\text{Estimated Net Savings})$$

$$\text{Therefore; Price Adjustment} = C_{\text{WSDOT}} + \frac{1}{2}(W_{\text{original}} - W_{\text{actual}})$$

Where

$C_{\text{WSDOT}}$  = Any additional costs to WSDOT involved in the VECP, including but not limited to: VECP review costs (these do not include review and oversight of the final design); and Collateral Savings and/or future savings as described in the General Provisions.

$W_{\text{original}}$  = The cost to perform the Work according to the contract documents, excluding profit. “Work” is the Work as defined in the contract, which, among other things, may include design, soils investigations, obtaining permits, and construction.

$W_{\text{actual}}$  = The cost to perform the Work according to the proposed change, excluding profit. “Work” is the Work as defined in the contract, which, among other things, may include design, soils investigations, obtaining permits, and construction.

Note that the contract makes a distinction between (a) the Design-Builder’s cost of studying and preparing the VECP, versus (b) the Design-Builder’s cost for final design and engineering the Work proposed in the VECP. For (a), the contract expects the Design-Builder to bear all costs related to developing the concepts of the VECP and presenting these to WSDOT. For (b) the contract expects the Design-Builder’s cost difference between original and actual for

engineering, soils investigations, and final design to be a cost that is shared equally by the parties.

Note also that the contract recognizes the inherent difference between design-build and bid-build; in DB, the Contract price includes the cost of initial design, whereas in BB it does not. Therefore, the DB contract, unlike the BB guidelines in the Construction Manual, need not address the cost of design separately because it is already included in the definition of Work. In similar fashion,  $C_{WSDOT}$  does not include WSDOT's cost for review and oversight of the final design. This is because those costs are expected to be borne by WSDOT on one design or another.

As a final note, no further adjustment is warranted if the Design-Builder requests additional compensation for the final design of the original contract work when it was completed prior to submitting the VECF. This is because the Design-Builder is expected to efficiently manage the design by doing it only once, and therefore WSDOT should pay for it only once.

## 2.5 Changes to Category B Requirements

Section 1-04.4(3) of the General Provisions stipulates that a change to any of the following Contract requirements comprises a Category B change:

- A change to any requirement found in Chapter 2, Technical Requirements, but not including changes to standards identified as “Mandatory Standards”
- Any change to a requirement of the WSDOT Standard Specifications, or to the Amendments to the Standard Specifications which are included in the Contract. If the Design-Builder proposes to do something differently from the way it is addressed in the Standard Specifications or Amendments thereto, it shall be considered a change to the Standard Specifications.
- Any change to a requirement identified in the Contract as a Special Provision

Changes to the Category B Contract requirements can result from a change proposed by the Design-Builder, known as a Category B Change Proposal, or from a WSDOT-directed change. Each Party shall bear its own costs in the preparation and review of the change.

### 2.5.1 Category B Change Proposal (CBCP)

Category B Change Proposals which are “equal or better” than the underlying Contract requirements may be implemented without any sharing of the Design-Builder's cost savings, provided the change (1) is deemed by WSDOT (with concurrence from HQ Construction) to be “equal or better” than the underlying Contract requirement that is being changed, and (2) does not include design deviations as defined in the Design Manual Section 300.0, and (3) does not include ideas taken from a non-winning Proposal. These changes may use the Minor Change form and shall be entered into CCIS. In evaluating whether or not a Design-Builder proposed change is “equal or better”, consider the following at the very least:

- Function
- Structural Adequacy
- Safety
- Maintenance

- Aesthetics
- Traffic Impacts
- Environmental Commitments
- Surrounding Communities
- The need for Noise Walls
- Risk of Differing Site Conditions
- Risk of Utility and Rail Impacts
- ROW or Easements
- Other Risks to WSDOT

CBCP's which are not deemed by WSDOT to be "equal or better" may be implemented as the parties agree, but the WSDOT share of the savings shall be at least 50%.

CBCP's which include design-deviations may be implemented as the parties agree, but the WSDOT share of the savings shall be at least 50%.

CBCP's which include ATC's or other ideas from non-winning proposals may be implemented as the parties agree, but the WSDOT share of the savings shall be 50%.

## **2.6 CEVP's on Category B items versus CBCP**

From the above, it is evident that if the Design-Builder proposes a change to a Category B requirement it could be presented and evaluated as either a VECP or a CBCP. The final decision is up to the Design-Builder; however, if the change can truly meet the more rigorous standard for "equal or better" as determined by WSDOT, the Design-Builder will receive a larger benefit by proposing the change as a CBCP.

## **2.7 Changes that Don't Seem to Fit Category A or B**

Some changes are prescribed by the Contract, and may seem to fit neither category A nor B. Examples are:

- Differing Site Conditions
- Unknown Contaminated Material
- Unknown or Inaccurate Utilities that have not been abandoned
- Drilled Shaft Obstructions (only applies to some contracts)
- Necessary Basic Configuration Change

The above shall be considered Category A Changes, shall be documented using the Change Order Form, and shall address cost and time as prescribed in the Contract.

Other changes may also be unclear as to their category, such as added work, revisions to an appendix identified as a Contract Document, etc. These shall be considered Category A changes unless otherwise agreed by HQ Construction.

## **2.8 Concept Approval of Changes**

At the Design-Builder's option, WSDOT will review a request for concept approval. This review will allow the Design-Builder to gauge the likelihood of WSDOT change approval prior to significant effort that may be required for complex Contract changes. A request for concept approval will include, at minimum, the following information:

1. Declaration of the change category and a narrative description of the proposed change;
2. Description of the existing Contract requirements which are involved in the proposed change;
3. Discussion of differences between existing requirements and the proposed change, together with consideration for advantages and disadvantages to the Design-Builder.

Concept approval or rejection should be provided from approval authorities within 3 working days of their receipt of the request. Following receipt of concept approval, the Design-Builder will be expected to complete necessary work to fully document the proposed change, as detailed in the Contract.

Change approval will not be given prior to receipt and review of the fully documented Design-Builder's proposed change. If WSDOT rejects a Design-Builder proposed change following concept approval, WSDOT should provide justification for the rejection. Concept approval does not guarantee change approval. Concept Approval is not extended to such things as design deviations as defined in the Design Manual Section 300.03, or changes to mandatory standards other than those which are explicitly identified in the Design-Builder's proposed change.

## **2.9 Changes Signed/Sealed by the Engineer of Record**

Change Orders that modify Contract requirements for (1) design and/or (2) construction requirements that relate to the design, shall be signed by the Design-Builder's Engineer of Record to indicate that the Engineer of Record concurs with the change. If the Change Order is to a level of detail that it includes drawings and/or specifications that could be used as final design documents/specifications, the Engineer of Record shall be required to sign and seal the documents.

## **2.10 Approval and Execution Authority**

Approval authority for Change Orders is delegated according to the attached Design-Build Change Order Checklist and this Guidance Statement. When interpreting the Change Order Checklist items regarding "cost or credit equal to or exceeding...", the dollar amount of the Change Order shall be determined by summing the absolute value of the deletions with the absolute value of the additions. Note that the Project Engineer's approval is required for all Contract changes, and Region approval is also required for all Contract changes.

Execution authority for Change Orders is delegated according to the attached Design-Build Change Order Checklist, and the following.

- The State Construction Engineer (or designee) executes the Change Order if any checklist item 1, 2, or 3 are included in the change. The State Construction Engineer designates Design-Build Contract Change Order execution authority with this Guidance Statement as follows:

Executing Authority	Dollar Limit	Time Limit
State Construction Engineer	Greater than \$1,000,000	Greater than 60 days
Construction Engineers	Not to exceed \$1,000,000	Not to exceed 60 Days
Assistant Construction Engineers	Not to exceed \$750,000	Not to exceed 45 Days
Region Administrator or Designee	Not to exceed \$500,000	Not to exceed 30 Days

- The Regional Administrator (or designee) may execute a Change Order if any checklist item 1, 2, or 3 is not included in the change. The Region Administrator (or designee) may delegate authority to execute Change Orders to the Region Construction Engineering Manager. The Region Construction Engineering Manager may further delegate authority to execute Change Orders to the assistant to the Region Construction Manager; and,
- The Region Administrator (or designee) may delegate authority to execute a Change Order to the Project Engineer if none of checklist items 1-7 are included in the change. In the absence of the Project Engineer, the Project Engineer's execution authority may be further delegated to the Assistant Project Engineer.
- The State Construction Engineer may delegate State Construction Engineer approval and/or execution authority to a designated representative on the project team, but such delegation shall be in writing. In this case, proper oversight and documented systems and processes must be established to ensure: statewide consistency, transfer of lesson's learned, maintenance of industry relationships, and use of an auditable process.

## 2.11 State Construction Office Support and Approval

The State Construction Office will assign an Assistant State Construction Engineer ASCE-Roadway, and ASCE – Bridges, to each Design-Build project. These ASCEs will act as the point of contact for all Contract issues, with areas of responsibility in accordance with Construction Manual Chapter 1-2.4C(3). ASCE roles are to provide timely technical support, coordinate with other experts as needed, and act with the State Construction Office approval and execution authority as required in the Design-Build Change Order checklist.

## 2.12 FHWA Approval

For Contract changes on projects that are federally funded, or for those projects that have FHWA oversight, the Project Engineer shall ensure FHWA involvement in the Change Order process as described in the Construction Manual 1-2.4C(3)(I)[1].



## 2.13 Change Order Documentation

All Change Orders shall be documented, transmitted and distributed according to Construction Manual Chapter 1-2.4C(6), and the following. Effective December 18, 2009 and thereafter, the Change Order Form and the Design-Build Minor Change Form (attached) are the only instruments approved for use in making changes to the Contract. Prior to December 4, 2009, the Change Order Form, the Minor Change Form, and the Category B Change Order Form will be considered acceptable.

At the discretion of the WSDOT Project Team, and as detailed in section 1-04 of the General Conditions, payment or credit for any change (other than a Category A change) meeting the requirements of Construction Manual section 1-2.4C(7) may be authorized as a “Minor Change.” The Minor Change process may be applied only to Category B Contract requirements. The procedure for Minor Changes is outlined in the Construction Manual Section 1-2.4C(7). For Design-Build Contracts, use the Minor Change form modified for DB (attached).

When entering Change Orders into the Construction Contract Information System (CCIS) the Change Order title shall describe the change category (Category A or Category B, as appropriate). An example of a Category B Change Order title would be, “Cat B – Project Datum Adjustment.” Otherwise, Change Order entry into CCIS is no different for a Design-Build project than it is for Bid-Build project.

Change Orders shall address only one issue per Change Order.

## 3 What are the Benefits?

The process described herein gives direction and guidance to clarify and streamline WSDOT internal process for Design-Build Contract change approvals. This policy will:

1. Provide statewide consistency in Change Order management;
2. Allow WSDOT to capture lessons learned on a global basis; and
3. More quickly address required Contract revisions.

## 4 Abbreviations

ASCE	Assistant State Construction Engineer
ATC	Alternative Technical Concept
CBCP	Category B Change Proposal
CCIS	Construction Contract Information System
DB	Design-Builder
VECP	Value Engineering Change Proposal
WSDOT	Washington State Department of Transportation



**Washington State  
Department of Transportation**

## DESIGN-BUILD CONTRACT - MINOR CHANGE

<b>Contract Number</b> <input type="text"/>	<b>Contract Title</b> <input type="text"/>	<b>Federal Aid Number</b> <input type="text"/>
<b>Change Order Number</b> <input type="text"/>	<b>Change Order Title</b> <input type="text"/>	<b>Date</b> <input type="text"/>
<b>Project Engineer</b> <input type="text"/>		<b>Design-Builder</b> <input type="text"/>

- ☐ Ordered by Engineer under the terms of the Contract  
☐ Change proposed by Design - Builder

All work, materials and measurements to be in accordance with the provisions of the Contract for the type of construction involved unless stated otherwise in this document.

Change description:

Est. Net Change This C.O.

\$

### APPROVALS:

<b>Design-Builder:</b> .....	<b>Date</b> <input type="text"/>
<b>Engineer of Record:</b> .....	<b>Date</b> <input type="text"/>
<b>Other Approvals:</b> .....	<b>Date</b> <input type="text"/>
<b>Project Engineer's Signature for Execution:</b> .....	<b>Date</b> <input type="text"/>

**Distribution:** Copy of Change Order Page & Memorandum Page w/Backup - Project Engineer

Copy of ONLY Change Order Page - Design-Builder

Copy of Change Order Page & Memorandum Page w/o Backup - Region Construction Office

Original of Change Order Page & Memorandum Page w/Checklist and Approval Documentation - State Construction Office

DOT Form 421-006 DB  
Revised 01/01/10

Change Order Page



**Washington State  
Department of Transportation**

## DESIGN-BUILD CONTRACT - MINOR CHANGE

<b>Contract Number</b> <input type="text"/>	<b>Contract Title</b> <input type="text"/>	<b>Change Order Number</b> <input type="text"/>
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**Brief Description of Problem / Reason for Entitlement**

**Justification of Cost**

<b>Calculated By</b> <input type="text"/>				<b>Date</b> <input type="text"/>		<b>Checked By</b> <input type="text"/>				<b>Date</b> <input type="text"/>	
<b>Inspector's Signature</b> ..... <input type="text"/>				<b>Date</b> <input type="text"/>		<b>Work Started</b> <input type="text"/>				<b>Work Completed</b> <input type="text"/>	
Item No.	Item	Group	Date	Unit	Quantity	RAM/QPL	Ledger No.	Post	Ckd	Est. No.	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

## DESIGN-BUILD CHANGE ORDER CHECKLIST

Cont. #: _____	Cont. Title: _____	Approval from State Construction Office Required	
C.O. #: _____	C.O. Title: _____		
Category: <input type="checkbox"/> A <input type="checkbox"/> B			
<b>I. Executed by the State Construction Office</b>			
1. Cost or credit equal to or exceeding \$500,000.*1		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
2. Change in the contract documents beyond the scope, intent or term of the original contract.*2		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
3. Change in the condition of award.		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
<b>II. Executed by the Region</b>			
4. Cost or credit greater than \$100,000 but less than \$500,000.*1		<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Change in contract time greater than 10 and less than or equal to 30 working days, must be related to changes implemented by change order.		<input type="checkbox"/> Yes <input type="checkbox"/> No	
6. Change in contract time greater than 30 working days.		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
<b>III. Executed by the Project Engineer</b>			
7. Determination of impacts and/or overhead.		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
8. Design or construction work that does not comply with the Mandatory Standards.		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
9. A change to a Chapter 1 General Provision.		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
10. A change to a technical requirement in any of the following sections: Design Deviations, Geotechnical Design, Pavement, Project Documentation, Bridges and Structures, Control of Materials, MWBE Goals, QMP Requirements, or WSDOT Standard Specifications.		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
11. Determination of changed condition (Section 1-04.7 of the Request For Proposal).		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
12. Settlement of a claim (Section 1-09.11(2) of the Request For Proposal).		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
13. Repair of damage regarding "acts of God" or "acts of the public enemy or of government authorities (Section 1-07.13 of the Request For Proposal).		<input type="checkbox"/> Yes <input type="checkbox"/> No	X
14. A "no-cost" change based upon a determination of "equal or better".		<input type="checkbox"/> Yes <input type="checkbox"/> No	X

## Approvals obtained:

Project Engineer: (REQUIRED)

\_\_\_\_\_

Date:

\_\_\_\_\_

Region: (REQUIRED)

\_\_\_\_\_

Date:

\_\_\_\_\_

State Construction Office:

\_\_\_\_\_

Date:

\_\_\_\_\_

## To be completed by the Project Engineer :

CO Reason(s) (See CCIS Source/Outcome) :

\_\_\_\_\_

Change Order Prepared By:

\_\_\_\_\_

Date:

\_\_\_\_\_

Has change been entered as lesson learned?

☐ Yes ☐ No ☐ N/A

Has design documentation been updated?

☐ Yes ☐ No ☐ N/A

Is change approved by program management?

☐ Yes ☐ No ☐ N/A

## To be completed by the Region :

Is the change eligible for Federal participation?

☐ Yes ☐ No ☐ N/A

Change Order Reviewed by:

\_\_\_\_\_

Date:

\_\_\_\_\_

This form represents the minimum information required by the State Construction Office. \*3

\*1 Cost or Credit greater than \$200,000 on Federal Stewardship requires FHWA approval (see Construction Manual - Ch.1-2.4C(3) and Ch. 1-3.4)

\*2 Per RCW 47.28.050, any change beyond \$7,500 that is beyond the original scope shall go through the competitive bidding process.

\*3 Changes that do not meet any of the itemized criteria above may be executed by the PE with Region approval.

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